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State v. Beadz Appellant's Brief Dckt. 39387

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CHRISTOPHER STEPHEN BEADZ, Defendant-Appellant.	)	NO. 39387 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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STATEMENT OF THE CASE

Nature of the Case

Christopher Stephen Beadz appeals from the judgment of conviction for injury to jails, entered following his court trial. He asserts that his oral waiver of his right to a jury trial was not valid, and that the evidence presented was insufficient to support the district court's finding, beyond a reasonable doubt, that he was guilty of injury to jails.

Statement of the Facts and Course of Proceedings

Mr. Beadz was charged by information with injury to jails based on the claim that he "did willfully and intentionally injure the Twin Falls County Jail by breaking a cell window, in violation of Idaho Code § 18-7018." (R., p.42.) The case was tried to the court at the request of the attorneys[1] with a single witness, Deputy Jacob Benson, testifying. (*See generally* Tr.)

The evidence at trial was essentially undisputed. Deputy Benson testified that Mr. Beadz was an inmate at the Twin Falls County Jail at the time of an incident in which the window in the door of his cell was broken. Mr. Beadz slammed his forehead into the window after becoming angry about disciplinary action that Deputy Benson had taken when Mr. Beadz violated jail rules. Deputy Benson then returned to Mr. Beadz's cell, noticed that the window in the cell door was broken, and saw Mr. Beadz standing in the middle of his cell, bleeding from his head and looking "woozy" and "dazed." Deputy Benson described the window as consisting of "pretty thick glass" and that he has seen other inmates bang into similar glass in the jail without it breaking.[2] Immediately after

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[1] *See* Supp.Tr., p.3, L.6 – p.5, L.14.)

[2] Deputy Benson testified that he had seen jail glass break some of the time when it has been hit. (Tr., p.25, Ls.13-22.)

the window broke, Mr. Beadz told Deputy Benson, "[y]ou know I didn't even mean to do it." (Tr., p.51, Ls.8-17.) In an interview with Deputy Benson the day after the incident, Mr. Beadz explained, "My head wasn't supposed to go through that glass. It hurt real bad." (Tr., p.54, L.15 – p.55, L.11.) In a phone call between Mr. Beadz and his father nearly six months after the incident, Mr. Beadz said, "I put my head through the window going after Benson when I picked up my first felony." (Tr., p.6, L.17 – p.26, L.7.)

In closing argument, defense counsel's argument focused on whether Mr. Beadz had the requisite intent to injure the jail at the time that he banged his head against the window. Specifically, defense counsel argued that under the statute the State had to prove that at the time the person injures a jail "they have to intend more than just the act, which is what willfully covers, but they also have to intend the harm that's done, which is what intentionally covers." He went on to argue that Mr. Beadz was guilty of the lesser offense of misdemeanor malicious injury to property[3] because he did not act with the intent to break the window. (Tr., p.61, L.6 – p.64, L.8.)

The State responded by arguing:

> As far as why the legislature put both the words willfully and intentionally, because I would submit they are fairly synonymous and they basically define each other. I think that clearly where Mr. Beadz admits that he did put his head through that window, I think that this court should find that he did act both willfully and intentionally, as there was no accident and it was not a result of an involuntary action. This was a voluntary, intentional act, and I think he should suffer the consequences for his action. Otherwise, in any other criminal case a defendant could go around committing criminal acts and then say, gosh, I didn't really mean for that result to have happened. That certainly can't be a valid and complete defense to criminal acts.

(Tr., p.65, L.13 – p.66, L.2.)

[3] Idaho Code § 18-7001(1).

Ultimately, relying on *State v. Doe*, 144 Idaho 819 (2007), and *State v. Nunes*, 131 Idaho 408 (Ct. App. 1998), both of which interpreted the malicious injury to property statute, the district court found Mr. Beadz guilty of injury to a jail. (Tr., p.67, L.22 – p.70, L.18.) Following sentencing, the district court entered a judgment of conviction for injuring jails. (R., pp.78-82.) Mr. Beadz then filed a Notice of Appeal timely from the judgment of conviction. (R., p.89.)

ISSUES

1. Was Mr. Beadz deprived of his constitutional right to a jury trial when the district court held a court trial in the absence of a knowing, intelligent, and voluntary waiver of that right?

2. Was the evidence sufficient to support Mr. Beadz's conviction on the charge of injury to a jail where the State failed to prove that he intended to cause damage to the jail?

ARGUMENT

I.

Mr. Beadz Was Deprived Of His Constitutional Right To A Jury Trial When The District Court Held A Court Trial In The Absence Of A Knowing, Intelligent, And Voluntary Waiver Of The Right

A. Introduction

The district court accepted an oral waiver of Mr. Beadz's right to a jury trial at a hearing held two days before trial. At that hearing, defense counsel explained that he was requesting a court trial because,

> The reasoning is I think the issue that we have for the court on this case is really perhaps properly defined as a legal issue rather than – there is a factual component to it, but I thinks it's primarily a legal issue, so I think it's better as a court trial. I had that discussion with my client and he indicated he was okay with the court handling the trial rather than the jury.

(Supp.Tr., p.3, Ls.16-24.) The district court then inquired as to whether the State concurred in defense counsel's request for a court trial, with the State explaining that it did. The State, defense counsel, and the district court then discussed scheduling of the trial, settling on one two days later, a Wednesday afternoon. (Supp.Tr., p.3, L.25 – p.4, L.19.)

The district court then addressed Mr. Beadz on the issue for the first and only time, memorialized in the following exchange:

> THE COURT: I can certainly accommodate the parties doing that [having the trial on Wednesday afternoon]. In fact, I would like to because I just this afternoon received a letter back from the Department of Corrections [sic] about Mr. Beadz's status on his rider program and he is really up in the air because he was brought back for this trial. *So, we need to get this resolved for your benefit, Mr. Beadz.*
>
> Let me ask you, do you understand that you have the right to have a jury decide this case? What your counsel is telling me is that you want to waive that jury trial and let myself [sic] become the jury in effect. Is that what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I will accept that waiver . . . .

(Supp.Tr., p.4, L.20 – p.5, L.8 (emphasis added).)

Mr. Beadz asserts that his constitutional right to a jury trial was violated when his guilt was found by the district court, rather than a jury. The district court did not obtain a knowing, intelligent, and voluntary waiver of Mr. Beadz's right to a jury trial before conducting a court trial. While Mr. Beadz did not object to the lack of a jury trial below, he asserts that the deprivation represents fundamental, structural error, and, therefore, can be considered for the first time on appeal. For the reasons set forth below, this Court should vacate the judgment of conviction and remand this matter for a new trial, or, in the alternative, for an evidentiary hearing to determine whether his oral waiver was knowingly, intelligently, and voluntarily made.

B. Standards Of Review

1. Fundamental Error

In *State v. Perry*, 150 Idaho 209 (2010), the Idaho Supreme Court announced its adoption of a fundamental error analysis applicable to most unpreserved claims of constitutional violations. For most such claims, this Court will only provide relief if the defendant satisfies a three-prong test by establishing that the error "(1) violates one or more of the defendant's unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless." *Perry*, 150 Idaho at 227-28.

Some unpreserved constitutional errors – "structural defects" -- are of such magnitude that they defy the application of the harmless error test set forth by the

United States Supreme Court in *Chapman v. California*, 386 U.S. 18 (1967). The constitutional rights underlying such structural defects "are so basic to a fair trial that the violation of those rights requires an automatic reversal and is not subject to harmless error analysis." *Id.* at 222 (citing *Arizona v. Fulminante*, 499 U.S. 279 (1991)). Structural defects are those "which affect 'the framework within which the trial proceeds, rather than simply an error in the trial process itself' and thus are so inherently unfair that they are not subject to harmless error analysis." *Id.* (quoting *Fulminante*, 499 U.S. at 307-08.)

In *Perry*, this Court noted that the United States Supreme Court had only found the following errors to be structural: "(1) complete denial of counsel; (2) biased trial judge; (3) racial discrimination in the selection of a grand jury; (4) denial of self-representation at trial; (5) denial of a public trial; (6) defective reasonable doubt instruction; and (7) erroneous deprivation of the right to counsel of choice." *Id.* (internal citations omitted). The *Perry* Court noted, "[a]lthough there may be other constitutional violations that would so affect the core of the trial process that they would require an automatic reversal, as a general rule, most constitutional violations will be subject to harmless error analysis." *Id.* at 222-23 (citation omitted). In *Sullivan v. Louisiana*, 508 U.S. 275 (1993), the United States Supreme Court, discussing the right to a jury trial guaranteed under the Sixth Amendment, concluded, "[t]he deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Sullivan*, 508 U.S. at 281-82.

2. Waiver Of A Constitutional Right

"[T]he state has a heavy burden in overcoming a presumption against the waiver of constitutional rights." *State v. Bainbridge*, 108 Idaho 273, 276 (1985) (citation

omitted). On appeal, a waiver of a constitutional right "will be upheld if the entire record demonstrates the waiver was made voluntarily, knowingly and intelligently." *State v. Weber*, 140 Idaho 89, 95 (2004); *see also State v. Mitchell*, 104 Idaho 493, 498 (1983) (appellate court looks to the totality of the circumstances when assessing whether trial court properly found a valid waiver of a constitutional right).

C. Mr. Beadz Was Deprived Of His Constitutional Right To A Jury Trial When The District Court Held A Court Trial In The Absence Of A Knowing, Intelligent, and Voluntary Waiver Of The Right

Article I, Section 7 of the Idaho Constitution, in relevant part, provides, "[t]he right of trial by jury shall remain inviolate . . . A trial by jury may be waived in all criminal cases, by the consent of all parties, expressed in open court . . . ." IDAHO CONST. Art. I § 7. The Sixth Amendment to the United States Constitution, in relevant part, provides, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." U.S. CONST. amend. VI. The Idaho Constitution provides greater protection of the right to a jury trial in a criminal case than the Sixth Amendment. *See State v. Wheeler*, 114 Idaho 97, 100-01 (Ct. App. 1988) (Sixth Amendment guarantees jury trial only for "serious, non-petty offense[s]," while Article I, Section 7 guarantees jury trial for "all public offenses which are potentially punishable by imprisonment or where potential fines or other sanctions are punitive in nature") (citations omitted).

In concluding that a criminal defendant may waive his Sixth Amendment right to a jury trial, the United States Supreme Court has explained that because the right is so important it must be "jealously preserved," and, "that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, *in addition to the express and intelligent consent of the defendant*." *Patton v. United*

States, 281 U.S. 276, 312 (1930), *abrogated on other grounds by Williams v. Florida*, 399 U.S. 78 (1970) (emphasis added). The Court concluded by noting, "the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from" the preference for trial by jury, with the court's "caution increasing in degree as the offenses dealt with increase in gravity." *Id.* at 312-13.

Idaho Criminal Rule 23(a) provides, "[i]n felony cases issues of fact must be tried by a jury *unless a trial by jury is waived by a written waiver* executed by the defendant in open court with the consent of the prosecutor expressed in open court and entered in the minutes." I.C.R. 23(a) (emphasis added).

Several appellate courts have adopted colloquies that must be conducted before the right to a jury trial may be waived. In *State v. Anderson*, 638 N.W.2d 301 (Wis. 2002), the Supreme Court of Wisconsin considered whether a defendant, who signed and filed a written jury trial waiver, which included information that he had the right to trial before a twelve person jury, all of whom must agree in order to render a verdict, but was never asked, in open court, whether he wished to waive his right to a jury trial, had knowingly, intelligently, and voluntarily waived his right to a jury trial. In holding that the record did not demonstrate a knowing, intelligent, and voluntary waiver, the Court explained,

> To prove a valid jury trial waiver, the [trial] court must conduct a colloquy designed to ensure that the defendant: (1) made a deliberate choice, absent threats or promises, to proceed without a jury trial; (2) was aware of the nature of a jury trial, such that it consists of a panel of 12 people that must agree on all elements of the crime charged; (3) was aware of the nature of a court trial, such that the judge will make a decision on whether or not he or she is guilty of the crime charged; and (4) had enough time to discuss this decision with his or her attorney.

Anderson, 638 N.W.2d at 310. The Court explained that the colloquy requirement "'serves the dual purposes of ensuring that a defendant is not deprived of his constitutional rights and of efficiently guarding our scarce judicial resources.'"[4] *Id.* at 309-10 (quoting *State v. Klessig*, 564 N.W.2d 716 (Wis. 1997)). In light of the defendant's execution of a written waiver, however, the Court declined to order a new trial, and instead remanded the matter for an evidentiary hearing as to whether the defendant's jury trial waiver was made knowingly, intelligently, and voluntarily. *Id.* at 312.

In *Com. v. DeGeorge*, 485 A.2d 1089 (Pa. 1984), the Supreme Court of Pennsylvania considered whether the failure to comply with a rule of criminal procedure mandating the procedure for waiving the right to a jury trial required remand for a new trial or for an evidentiary hearing. The rule provided that a criminal defendant, with the consent of his attorney and the approval of the trial court, could waive his right to a jury trial, with the following caveat: "[t]he judge shall ascertain from the defendant whether this is a knowing and intelligent waiver, and such colloquy shall appear on the record." *DeGeorge*, 485 A.2d at 1090-91 (emphasis and internal punctuation omitted). Concluding that the proper colloquy[5] was not conducted, the Court nonetheless remanded for an evidentiary hearing because the existence of the signed written waiver

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[4] The judicial resources referred to were those of appellate courts forced to search trial records for evidence of the validity of a waiver when no colloquy is conducted.

[5] Under Pennsylvania case law, a defendant must be made aware of the "essential ingredients, basic to the concept of a jury trial," specifically, "that the jury be chosen from members of the community (a jury of one's peers), that the verdict be unanimous, and that the accused be allowed to participate in the selection of the jury panel." *Com. v. Williams*, 312 A.2d 597, 600 (Pa. 1973); *see also DeGeorge*, 485 A.2d at 1091 (noting *Williams'* requirement that a defendant waiving his right to a jury trial must be made aware of "the elements of a jury trial," specifically, "selection of jurors from the community, requirement of unanimous verdict and participation in selection of the jury").

of the right to a jury trial provided some evidence that a valid waiver had been made. At such an evidentiary hearing, the trial court would be able to hear testimony concerning "the extent to which counsel and client may have conferred on that which was waived, or what colloquy was conducted at the time the written waiver was executed." *Id.* at 1091-92 (footnote omitted).

Several other appellate courts have held that some sort of colloquy, by which a defendant is informed of the nature of the right to a jury trial, *should* be conducted by the trial court. *See Com. v. Hendricks*, 891 N.E.2d 209, 218-19 (Mass. 2008) (upholding waiver in light of a colloquy which provided facts allowing the trial judge to find that the defendant "was aware of the differences between a jury and jury-waived trial, that he had not been coerced or improperly influenced in his decision, and that he was rationally capable of executing the waiver") (citation omitted); *People v. Montoya*, 251 P.3d 35, 43-46 (Colo. Ct. App. 2010) (remanding to the trial court for an evidentiary hearing after finding that the trial court did not comply with rule of criminal procedure governing waivers of jury trial when it failed to "determine whether he understood that his decision to waive a jury trial was his alone and could be made contrary to his counsel's advice; that the waiver would apply to all issues that might have been determined by a jury, including those requiring factual findings at sentencing; and that the jury would have consisted of twelve persons who would be required to reach a unanimous verdict, whereas in a trial to the court, the judge alone would decide the verdict . . . .")[6]; *United States v. Duarte-Higareda*, 113 F.3d 1000 (9th Cir. 1997) (noting

[6] The *Montoya* Court noted, "[d]espite the benefits to appellate courts of having a recorded colloquy between the trial court and the defendant in jury waiver cases, the overwhelming majority of federal and state courts, including those in Colorado, have held that such a colloquy is *not* constitutionally required. It is only a procedural device that assists the court in resolving the constitutional issue of whether a jury trial waiver is

that there was "no absolute requirement" of a colloquy in every case, particularly those in which a written waiver has been filed, but noting that, prior to accepting any jury trial waiver, "[t]he district court should inform the defendant that (1) twelve members of the community compose a jury, (2) the defendant may take part in jury selection, (3) a jury verdict must be unanimous, and (4) the court alone decides guilt or innocence if the defendant waives a jury trial . . . [and] question the defendant to ascertain whether the defendant understands the benefits and burdens of a jury trial and freely chooses to waive a jury") (internal citations omitted).

Even in jurisdictions in which colloquies are not necessary, the appellate courts have adopted a totality of the circumstances test for determining whether a waiver of the right to a jury trial was made knowingly, intelligently, and voluntarily. In *Davis v. State*, 809 A.2d 565 (Del. 2002), the Supreme Court of Delaware found no requirement that a colloquy be conducted in order to conclude that a written jury trial waiver was made knowingly, intelligently, and voluntarily. *Davis*, 809 A.2d at 570. The Court did, however, adopt a prospective requirement that "[i]n the future, Delaware trial judges should conduct a colloquy with the defendant, in addition to accepting his or her written waiver of the right to a jury trial." Although it declined to specify the exact limits of such a colloquy, it noted, "[a]t a minimum, the trial judge should engage in an exchange with the defendant similar to the colloquy set forth by the Seventh Circuit," which includes an explanation "that a jury is composed of twelve members of the community, that the defendant may participate in the selection of jurors, and that the verdict of the jury is unanimous." *Id.* at 571-72 (citation omitted).

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made knowingly, voluntarily, and intelligently." *Montoya*, 251 P.3d at 41 (citations and internal quotation marks omitted) (emphasis in original).

Similarly, in *State v. Hassan*, 108 P.3d 695 (Utah 2004), the Supreme Court of Utah noted that no colloquy was necessary in order to find a knowing, intelligent, and voluntary waiver of the right to a jury trial. However, the Court explained, "we maintain that a colloquy will help judges ascertain whether a defendant meets this standard." The Court also noted that such a colloquy "will allow for efficient and informed appellate review of those waivers," and it "encouraged our judges . . . to conduct a colloquy before granting a waiver." *Hassan*, 108 P.3d at 699. In concluding that the totality of the circumstances indicated that Hassan had knowingly, intelligently, and voluntarily waived his right to a jury trial, the Court noted that the trial court had "advised Hassan of many implications of his waiver" prior to accepting it, and "was under no obligation to provide an exhaustive explanation of all the consequences of a jury waiver." *Id.*

Mr. Beadz asserts that the totality of the circumstances in his case demonstrate that he did not make a knowing, intelligent, and voluntary waiver of his right to a jury trial. Although no Idaho case stands for the proposition that a specific colloquy must be held before a trial court may accept a jury trial waiver, he asserts that the absence of any meaningful discussion of the features of a jury trial and the differences between a court and a jury trial,[7] along with the absence of the written waiver required under Idaho Criminal Rule 23(a), let alone one containing a description of the significance of the right,[8] renders his waiver constitutionally invalid.

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[7] *See State v. Powell*, 120 Idaho 707, 710 (1991) ("A court trial obviously differs significantly from a jury trial").

[8] In *State v. Campbell*, 131 Idaho 568 (Ct. App. 1998), the Idaho Court of Appeals declined to address the argument, raised for the first time on appeal, that a court trial conducted in a felony case without evidence of a written waiver of the right to a jury trial constituted reversible error. In so holding, the Court of Appeals noted, "Campbell does not complain that he was denied the right to a jury trial *but merely that his informed waiver of that right was verbal rather than in writing.* This assertion does not present a question of fundamental error." *Campbell*, 131 Idaho at 569 (emphasis added); *but see*

Additionally, the fact that the district court's questioning of Mr. Beadz regarding his desire to waive his right to a jury trial was preceded immediately by the district court implying that such a waiver was in his best interests is significant in determining the voluntariness of his waiver. (Supp.Tr., p.4, L.20 – p.5, L.1 ("I can certainly accommodate the parties doing that [having a court trial on Wednesday[9]]. In fact, I would like to because I just this afternoon received a letter back from the Department of Corrections [sic] about Mr. Beadz's status on his rider program and he is really up in the air because he was brought back for this trial. So, we need to get this resolved for your benefit, Mr. Beadz").) Such a statement may have unintentionally coerced Mr. Beadz into waiving his right to a jury trial. *See People v. Collins*, 26 Cal.4th 297 (Cal. 2001) (despite detailed colloquy explaining nature of the right to a jury trial, jury trial waiver was rendered involuntary by trial court's promise of unspecified benefit if defendant waived his right to a jury trial). Given the district court's statement implying that it was in Mr. Beadz's best interests to waive his right to a jury trial so that the matter could be tried a week early, it can hardly be said that his waiver was voluntarily made without coercion or undue influence.

For the reasons set forth herein, Mr. Beadz submits that the record in this case does not demonstrate that his jury waiver was knowingly, intelligently, and voluntarily

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Wheeler, 114 Idaho at 101 ("The method of waiving a jury trial is a procedural matter and is also governed by rules promulgated by our Supreme Court. *A waiver cannot be made or enforced unless it appears to have been made in conformance with the existing rule.*") (internal citations omitted) (emphasis added).

Mr. Beadz does not assert that the lack of a written waiver, by itself, renders his jury waiver constitutionally invalid; rather, he submits that its absence is one important circumstance in the totality indicating that his waiver was not knowingly, intelligently, and voluntarily made. *See Bainbridge*, 108 Idaho at 276 ("[A]n express written statement of waiver [of a constitutional right], although not conclusive, is strong evidence of the voluntariness of the waiver.") (citation omitted).

[9] The case was set for a jury trial the following week. (Supp.Tr., p.3, Ls.8-9.)

made. As such, this matter should be remanded to the district court for a new trial. Alternatively, if this Court concludes that some evidence exists that the waiver was knowingly, intelligently, and voluntarily made, he respectfully requests that this Court remand this matter for an evidentiary hearing at which defense counsel can be questioned regarding what, if anything, he advised Mr. Beadz concerning his right to a jury trial and the significance of waiving that right. Additionally, for the sake of judicial efficiency, Mr. Beadz urges this Court to adopt a prospective rule requiring that a criminal defendant seeking to waive his right to a jury trial be informed – either in a written form or through an oral colloquy – concerning the nature of the right and the differences between a jury and a court trial in order for such a waiver to be valid.

II.

The Evidence Was Insufficient To Support Mr. Beadz's Conviction For Injury To A Jail Where The State Failed To Prove That He Intended To Cause Damage To The Jail

A. Introduction

Mr. Beadz asserts that the State failed to produce sufficient evidence to establish, beyond a reasonable doubt, that he committed the offense of injury to a jail. Specifically, the State failed to adduce sufficient evidence to establish that he possessed the requisite intent to cause damage or injury to the jail. The judgment of conviction for injury to a jail must be vacated, and because the evidence was sufficient to support a conviction for the misdemeanor offense of malicious injury to property, this matter should be remanded to the district court for entry of a judgment of conviction on that lesser charge.

B. Standard Of Review

The standard of review for an appellate court when considering the sufficiency of the evidence to sustain a conviction was set forth in *State v. Peite*, 122 Idaho 809, 823 (Ct. App. 1992), in which the Idaho Court of Appeals noted that:

> A conviction will not be set aside where there is substantial evidence upon which any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. On appeal, we construe all facts, and inferences to be drawn from those facts, in favor of upholding the jury's verdict. Where there is competent although conflicting evidence to sustain the verdict, we will not reweigh the evidence or disturb the verdict.

Id. (citations omitted). "For evidence to be substantial, it must be of sufficient quality that reasonable minds could reach the same conclusion." *State v. Johnson*, 131 Idaho 808, 809 (Ct. App. 1998) (citing *Bott v. Idaho State Bldg. Auth.*, 128 Idaho 580, 586 (1996)).

A verdict cannot be based on speculation or conjecture. *See Ryan v. Beisner*, 123 Idaho 42, 46 (Ct. App. 1992) ("[A] verdict cannot rest on speculation or conjecture.") (citing *Petersen v. Parry*, 92 Idaho 647, 652 (1968)); *Pennsylvania R. Co. v. Chamberlain*, 288 U.S. 333, 344 (1933) (jury's verdict cannot rest "upon mere speculation and conjecture"); *United States v. Pinckney*, 85 F.3d 4, 7 (2d Cir. 1996) ("[A] conviction cannot rest on mere speculation or conjecture."); *United States v. Pettigrew*, 77 F.3d 1500, 1521 (5th Cir. 1996) ("[A] verdict may not rest on mere suspicion, speculation, or conjecture . . . ."); *United States v. Jones*, 49 F.3d 628, 632 (10th Cir. 1995) ("We cannot permit speculation to substitute for proof beyond a reasonable doubt. Even though rational jurors may believe in the likelihood of the defendant's guilt, as they probably did in this case, they may not convict on that belief alone."); *United States v. Diggs*, 527 F.2d 509, 513 (8th Cir. 1975) ("[A] jury is not justified in convicting a defendant on the basis of mere suspicion, speculation or conjecture."); *United States v.*

Bethea, 442 F.2d 790, 792 (D.C. Cir. 1971) ("[T]he trial judge should not allow the case to go to the jury if the evidence is such as to permit the jury to merely conjecture or speculate as to defendant's guilt."); *Karchmer v. United States.*, 61 F.2d 623 (7th Cir. 1932) ("A verdict which finds its only support in conjecture and speculation cannot stand.").

C. The Evidence Was Insufficient To Support Mr. Beadz's Conviction For Injury To A Jail Where The State Failed To Prove That He Intended To Cause Damage To The Jail

Idaho Code § 18-7018 provides:

> Every person who wilfully [sic] and intentionally breaks down, pulls down or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding $10,000, and by imprisonment in the state prison not exceeding five years.

I.C. § 18-7018.

In reaching its verdict, the district court discussed cases interpreting the malicious injury statute,[10] including *State v. Doe*, 144 Idaho 819 (2007). The district court explained its reliance on *Doe* as follows:

> The argument was made by the defense in that case, judge, I intended to start this fire, but I didn't intend to burn down the building. The court on appeal rejected that argument, as did the trial court, finding that the concept of transferred intent was sufficient to create criminal culpability for having placed in action the starting [of] the fire.
>
> By analogy in this case, by Mr. Beadz having struck the window, even though he may not, he says he may not have intended to break it, I think that is sufficient to withstand the argument that he didn't intend to injure the property.

[10] At the outset of its analysis, the district court explained, "I understand this is not a charge of malicious injury. So when I comment on some of these cases I'm about to comment on that have dealt with the malicious injury statute, the record should reflect that this judge understands that that word malicious is not defined and is not used in this statute. But, those cases are persuasive to me for what they have to say." (Tr., p.67, L.22 – p.68, L.4.)

(Tr., p.68, L.5 – p.69, L.3.) The district court then discussed *State v. Nunes*, 131 Idaho 408 (Ct. App. 1998), and its reliance on it as follows,

> That was a case where the defendant attempted to steal some gasoline and he broke a lock on the tank that housed this gasoline. In doing that, it caused 250 gallons of gasoline to spill on the ground. So instead of being faced with a charge of damage for a lock, he was faced with a $13,500 bill for having caused damage by letting the gasoline out. Again, the argument was made, well, you bet I intended to break the lock, but I didn't intend to cause all of this other damage. On appeal the court rejected that argument, similar like they did in the Doe case and said, no, it's when you place in the stream of events some conduct, you essentially suffer the consequences criminally and legally for the consequences that occur.

(Tr., p.69, Ls.8-21.)

Ultimately, the district court found Mr. Beadz guilty, reasoning,

> Simply stated, Mr. Beadz, I'm going to find you guilty of this charge because I think that the state has proven to me, well, not think, I do find that the state has proven to me beyond a reasonable doubt that you intentionally injured that property. You were angry. There's no question about that in my mind. You were acting out. There is no question about that in my mind, but the only rationale I can come to as to why someone would strike their head against the window in the fashion that you did with as much force as you did was that you intended to cause some injury. Now maybe you didn't contemplate that that window was going to break. I certainly recognize your argument that maybe you were simply trying to get Deputy Benson's attention, but under the facts of this case, I think the state has satisfied their burden so I do enter a judgment of guilt in this case.

(Tr., p.70, Ls.2-18.)

The cases relied upon by the district court in finding Mr. Beadz guilty of injury to a jail can be easily distinguished from the facts of his case. In both *Doe* and *Nunes*, the Idaho Supreme Court and the Court of Appeals, respectively, considered the malicious injury statute. That statute, Idaho Code § 18-7001, provides that a person is guilty of malicious injury if he "maliciously injures or destroys any real or personal property not his own . . . ." I.C. § 18-7001(1). The offense is a misdemeanor, unless the damage caused exceeds $1,000. I.C. § 18-7001(2). The term "maliciously" is defined as "a wish

to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law." *Doe*, 144 Idaho at 821 (quoting I.C. § 18-7001).

The evidence in *Doe* was that Doe, a juvenile, intentionally set fire to some weeds in a field that was approximately thirty feet from an apartment building. Despite attempts to put out the fire, it spread to the apartment building, causing damage to the building and the personal property of a tenant. At the juvenile adjudication hearing and on appeal, counsel for Doe argued that the State failed to produce sufficient evidence that he had "maliciously intended to destroy the apartment building or the contents or the [victim's] apartment." *Id.* at 820-21. In analyzing this argument, the Court noted, "It was uncontroverted that Doe intentionally set the weeds in the vacant lot on fire and that the fire then spread to the apartment building, burning it and the contents of the Hankins' apartment. It is also uncontroverted that he did not intend to burn the apartment building or its contents." *Id.* Applying the common law doctrine of transferred intent, the Court noted that the evidence was sufficient to show that Doe committed the offense because "[i]n this case, Doe intentionally set fire to property not his own (the weeds in the vacant lot) and the fire spread to other property (the apartment complex and the personal property in the apartment)." *Id.* at 821-22.

In *Nunes*, the Court of Appeals considered the malicious injury statute. Nunes was charged with felony malicious injury as a result of his attempt to steal gasoline from a large fuel tank. The undisputed evidence, set forth by the Court of Appeals, was that Nunes, intending to break the lock on the tank's valve, "instead broke the valve at the bottom of the tank, causing about 250 gallons of gasoline to spill onto the ground. The mandatory environmental cleanup of the spilled gasoline cost the corporate victim approximately $13,500." Nunes did not dispute that he had committed misdemeanor

malicious injury to property based on his intent to break the lock, but argued that the State failed to adduce sufficient evidence to establish that he had the requisite intent to cause damage in an amount exceeding $1,000. *Nunes*, 131 Idaho at 408.

In analyzing this claim, the Court of Appeals noted that the $1,000 provision that causes malicious injury to be elevated to a felony "does not include any state of mind component . . . [and thus] does not specify that the degree of damage must have been intended in order for the offense to be a felony." In rejecting Nunes' argument, the Court of Appeals explained, "the malice element is satisfied by evidence that the defendant intended to injure the property of another, and the State is not required to prove that the defendant intended the particular degree or scope of injury that ensued from his acts." It noted that its holding was "in accord with the generally recognized principle that '[w]ith the crime of malicious mischief, it makes no difference whether *A* intends to injure *B*'s property but actually destroys it, or intends to destroy but actually only injures it.'" *Id.* at 409-10 (quoting LAFAVE & SCOTT, SUBSTANTIVE CRIMINAL LAW, § 3.11, p.387 (1986)) (italics and brackets in original).

Unlike the facts in both *Doe* and *Nunes*, the evidence concerning Mr. Beadz's intent is not uncontroverted. While it was undisputed that Mr. Beadz slammed his head into the window of a jail cell, causing the window to break, Mr. Beadz's intent to cause injury was in substantial dispute. Mr. Beadz immediately told his jailers that he did not intend to break the window (Tr., p.51, Ls.8-17), and the next day told the authorities that his "head wasn't supposed to go through that glass." (Tr., p.54, L.15 – p.55, L.11.) The State argued that it did not have to show that Mr. Beadz intended to cause *any* damage to the window, instead, arguing that the statute's terms willfully and intentionally were "synonymous," and that it merely had to show that Mr. Beadz voluntarily and

intentionally slammed his head into the window. According to the State, to hold otherwise would allow criminal defendants to obtain acquittals by successfully arguing that they did not intend to cause the resulting injury. (Tr., p.65, L.13 – p.66, L.2.) Ultimately, the district court held that the mere fact that he slammed his head into the window was evidence that he intended to cause "some injury,"[11] and was, therefore, sufficient to establish, under *Doe* and *Nunes*, that he had committed the offense. (Tr., p.70, Ls.2-18.)

The problem with the district court's reasoning and reliance on *Doe* and *Nunes* is that it is misplaced. In both *Doe* and *Nunes*, it was undisputed that the defendants intended to cause specific injury to property. The only issues in those cases were whether the intent to cause the specific injury in *Doe* could transfer to other property (it could), and whether an intent to cause a specific amount of property damage was required to be proven to elevate malicious injury from a misdemeanor to a felony (it was not). Neither case dealt with the situation at bar; namely, a case in which it is in dispute whether the State established an intent to cause *any* injury to *any* property. The State argued that it did not have to show that Mr. Beadz had the intent to cause any resulting property damage; from that argument it can be inferred that the State did not believe that it had adduced sufficient evidence that he intended to cause injury to the jail. Ultimately, in concluding that the State had met its burden of proof, the district court erroneously relied on principles from *Doe* and *Nunes* that are inapplicable to the facts of

[11] The district court never identified the type of injury it believed Mr. Beadz intended to cause by slamming his head into the cell window. Mr. Beadz asserts that, to the extent that it formed an alternative basis for the finding of guilt, this conclusion should be disregarded, as it is unsupported by substantial and competent evidence in the record. *See State v. Varie*, 135 Idaho 848, 851 (2001) (legal conclusion reached by a district court "will not be disturbed on appeal unless it can be shown that such a conclusion is not supported by substantial and competent evidence") (citations omitted).

this case. Consequently, Mr. Beadz respectfully requests that this Court vacate the judgment of conviction, and remand this matter to the district court for entry of a conviction for misdemeanor malicious injury to property.

CONCLUSION

For the reasons set forth herein, Mr. Beadz respectfully requests that this Court vacate the judgment of conviction, and remand this matter to the district court for entry of a conviction for misdemeanor malicious injury to property. If this Court finds that the evidence was sufficient to support the felony verdict, he respectfully requests that this Court vacate the judgment of conviction, and remand this matter for a jury trial. Alternatively, he requests that this Court remand this matter for an evidentiary hearing regarding whether his jury trial waiver was knowingly, intelligently, and voluntarily made.

DATED this 31st day of August, 2012.

SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of August, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

SAMUEL S BEUS
TWIN FALLS COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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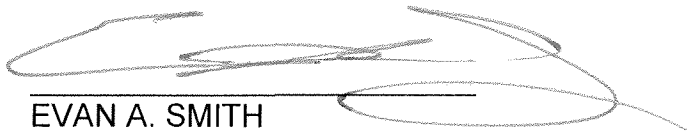

EVAN A. SMITH
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SJH/eas